ANNUAL FINANCIAL REPORT – DEFINITIONS

Accounting – The language of business that is used to measure, record, report, and interpret the financial aspects of a business.

Accounts payable – Money your company owes to business creditors for the purchase of outside services and goods.

Accounts receivable – Money owed to your company by other customers.

Amortization – The process of allocating the cost of an asset or the retirement of a liability over a specified number of years.

Assets – In accounting terms, an asset is something having value which may be a tangible object (building and inventory) or an intangible right (patent). Tangible assets are usually categorized as either real property (property of a nature that is affixed to the land) or personal property (property such as equipment). An asset may be permanent, such as land, or possessed for a term (such as a leasehold) or it may have an expiration date (such as a contract date).

Balance sheet – Statement showing the company's financial position at any given point in time. This statement consists of the assets, liabilities and owner's equity.

Capital – Wealth in the form of money invested in the business by its owners.

Cash – Generally, Cash is defined as currency on hand and funds on deposit available for the payment of debts.

Cash flow – The inflow and outflow of money in a business in a specified time. Cash flows differ from profits or losses because of non-cash expenditure and accrual basis accounting.

Contingent liability – A liability that is not necessarily shown on the company's financial statements but should be disclosed and explained in the accountant's notes to the financial statements. Contingent liabilities may be due to a lawsuit and would become a current liability if the company was to lose the suit.

Contracting Officer – Regional Director of the Mid-Pacific Region as delegated by the Commissioner.

Corporation – An organization that has been chartered by the State in which the individual(s) or company is based.

Current assets – Cash and other assets that can be converted into cash in a short period of time (usually within 1 year). Current assets include cash, marketable securities, accounts receivable (net of an allowance for bad debts), inventory (at lower of cost or market), and prepaid expenses.

Current liabilities – Money that is owed by a company that will be paid within a short period of time (usually within 1 year).

Depreciation – The allocation of the cost of an asset over time for accounting or tax purposes to account for the decline in the value of an asset due to wear and tear or obsolescence. The method for calculating the depreciation may conform to generally accepted accounting principles (GAAP) or the Internal Revenue Service (IRS) requirements, whichever is appropriate to the application.

Direct expense – Expenses that are directly related to the volume of gross sales.

Dividend – Payment made to corporate stockholders by the company as a result of their stock ownership rights.

Expenditure – A payment a company makes when it purchases a fixed asset or some other item that does not affect the income statement at the time of purchase.

Expenses – Cost of doing business other than that associated with the purchase of fixed assets or some similar item, such as inventory. These items will affect the income statement immediately upon payment.

Fiscal year – An accounting period of twelve months that does not necessarily end on December 31.

Fixed assets – In accounting terms-Items that are not intended for resale in the ordinary course of business; fixed assets are used in the operation of a service business, a manufacturing business, and the business of reselling the products of others. Examples are buildings, furniture and fixtures, land and improvements. Note: this definition differ in this appendix from the main contract definitions. For the purposes of the financial reporting please apply this definition.

Fixed costs – Operating costs that remain relatively constant regardless of fluctuations in the gross sales.

General and administrative (G&A) costs – Expenses that are not designated to a specific business area.

Goodwill – Goodwill is a concept of business that allocates the difference between the purchase price of a business and the sum of the individual values for each individual tangible asset purchased to an intangible account that represents the cost of acquiring a business that can not allocated to physical assets.

Gross profit – Gross sales minus the cost of goods sold.

Income statement – See statement of income.

Intangible assets – An asset without physical form, such as a contract right that may be owned that provides the owner with value.

Inventory – Raw materials, partially finished products, finished products and products bought for resale that have not yet been sold.

Liabilities – Debts a company owes to others.

Long-term liabilities – Money that is owed by a company that will not be paid within 1 year.

Net income – Profit at the end of the measurement period after recognition of all expenses. Also known as "the bottom line." A Net Loss would indicate that the expenses exceed revenues.

Partnership – A business in which two or more individuals, partnerships, or corporations pool their resources and share the profit or loss of the joint venture.

Prepaid expense – Payment of expenses before the company has received the benefit.

Retained earnings – The total cumulative net profit that a business has earned over its lifetime that has not yet been distributed.

Statement of income or losses – Summarizes the financial activity for a specified time period by looking at the gross revenue and the expenses generated by the company. This statement is also called the profit and loss (P&L) statement.

EXHIBIT K
RESERVE ACCOUNT FOR FACILITIES IMPROVEMENT

A. INTRODUCTION

This exhibit concerns the use of the RAFI funds. Funds set aside in a RAFI are referred to as RAFI funds. The source of these funds is established in the main body of the Concession Contract, Section 4. In the event of any inconsistency between this Exhibit K and the main body of the Concession Contract, the main body of the Concession Contract shall prevail.

B. POLICY FOR USE OF THE RESERVE ACCOUNT FOR FACILITIES IMPROVEMENT

The Concession Contract includes specific provisions establishing a RAFI and describes its purpose or principal goals. The account is needed to make funds systematically available for the ongoing improvement, construction, and renovation of concession facilities, specifically, significant nonrecurring capital improvement projects. The RAFI allows reserves to be set aside for known requirements even while exact projects, construction timing, and planning are not yet resolved.

The RAFI shall be used to improve, rehabilitate, or construct facilities that are Government or Concession Contractor funded and assigned to the Concession Contractor to directly support Concession Contractor services authorized or required under this Concession Contract.

C. APPROPRIATE FACILITIES

RAFI funds may be used only to fund Concession Contractor visitor service and concession facility projects constructed on Federal Estate lands assigned to the Concession Contractor for use in maintaining the visitor services and concession facilities authorized by the Concession Contract. Such projects are referred to as RAFI projects. Expenditures of RAFI funds for projects on other lands or for other purposes are a violation of the Concession Contract and unlawful. The RAFI projects, as established in this Concession Contract, are considered Concession Contract obligations.

Examples of appropriate facilities would include marinas, marina slips, marine fuel service facilities, campground pads and utilities, trailer and recreational vehicle pads, lodging, restaurants, gift shops or service stations, as well as support facilities necessary for the functioning of the concession's primary visitor facilities such as utility systems, administrative offices, and repair shops.

D. ACCOUNT INSTRUMENTS AND OWNERSHIP

RAFI funds can be invested in various instruments in advance of being used to carry out the Concession Contractor's obligations under the Concession Contract. The parties to this Concession Contract Exhibit K agree that RAFI funds that have yet to be disbursed shall be either held in an account insured by the Federal Deposit Insurance Corporation or a similar insuring entity of the Federal Government, and/or all investment instruments, which shall be notes, bills, and bonds issued by the United States Treasury, that will be whole instruments including both principal and interest (no derivative instruments) and shall be directly backed by the full faith and credit of the United States of America.

The funds in the RAFI will be held in accounts established and owned by the Concession Contractor to carry out Concession Contractor obligations under this Concession Contract. Trust and escrow accounts are not permissible. The Concession Contractor makes an irreversible commitment when deposits are made into a RAFI. Deposited funds do not become Government funds. Interest earned on RAFI funds becomes RAFI funds. The Concession Contractor is responsible for taxes owed on such interest. RAFI funds cannot be used to pay such taxes.

Any RAFI funds not duly expended by the Concession Contractor by the expiration of this Concession Contract shall be the property of the Concession Contractor unless there are approved or otherwise Reclamation required RAFI projects previously identified for completion in advance of contract expiration that have not been accomplished. In this case the projects' estimated costs will be made available by the Concession Contractor for application to those projects. If the Concession Contractor is also the succeeding Concession Contractor then the RAFI funds that are unexpended during the term of this Concession Contract will apply to the initial RAFI funding established in the next contract less the estimated costs of uncompleted but required projects.

In the event of termination of this concession contact, any unexpended RAFI funds shall be the property of the Concession Contractor unless there are approved or otherwise Reclamation required RAFI projects previously identified for completion at the date of contract termination that have not been accomplished. In this case the projects' estimated costs will be made available by the Concession Contractor for application to those projects.

E. Account Reporting

RAFI funds must be maintained in a separate account, with record keeping used to maintain continuous records of the balance as well as deposits to the account and disbursements from the account. Concession Contractors are responsible for reporting RAFI activity as required by Reclamation and described in Section 8 – Accounting Records and Reports, in the main body of the Concession Contract and in Exhibit J: Financial Reporting Forms.

The Concession Contractor shall submit to Reclamation quarterly, no later than 30 days after the end of last month of the reporting quarter, a RAFI Activity Report Exhibit J Schedules N-1 and O, that provides a summary of deposits and expenditures over the reporting period. This report should also contain a running summary of all funds currently available in the RAFI.

F. ACCOUNT EXPENDITURES THAT ARE NOT APPROPRIATE

RAFI funds shall not be used for the operating costs of building systems or for minor adjustment and repair that would be the usual, routine responsibility of the Concession Contractor. RAFI funds shall not be used for cyclic maintenance projects with a normal recurrence interval of less than 7 years.

Additionally, RAFI funds are not to be used for maintenance of, or improvements to, Government property not assigned to the Concession Contractor, or for Government projects or activities not directly related to the provision of the involved Concession Contractor's services.

RAFI funds are not to be used to pay for or otherwise reimburse the Concession Contractor for annual operating expenses or Government appropriation accounts.

RAFI funds will not be used for acquisition, lease, or maintenance of personal property. With the exception of built-in refrigeration units in kitchen facilities, all kitchen equipment shall be considered personal property and not eligible for RAFI expenditures. Examples of the type of other personal property that is not appropriate for RAFI expenditures include, but are not limited to, vehicles and vessels, houseboats, barges, personal watercraft (like jet skis), motor boats, sailboats, tour boats, paddleboats, canoes, kayaks, windsurfing equipment, dinghies, rowboats, parasailing equipment, horses, bicycles, motorbikes, snowmobiles, personal vehicles, buses, trucks, vans, and vending machines.

The account shall not be used to replace individual fixtures, doors, windows, or pieces of equipment (e.g., window air conditioning units) regardless of whether they are damaged by use or vandalism or have deteriorated as a result of normal operations.

The account shall not be used for decorating costs, furniture, interior painting, or periodic re-carpeting or other necessary cosmetic work. RAFI funds shall not be used for cleaning, housekeeping, groundskeeping, regular landscaping care, or similar routine upkeep activity. RAFI funds shall not be used for seasonal opening and closing costs.

G. APPROPRIATE ACCOUNT EXPENDITURES

Project activities that are appropriate for RAFI fund expenditures include project planning, management, design, and construction of new buildings and infrastructure, renovation or rehabilitation of existing buildings and related infrastructure, demolition of old facilities, footprint and landscape design, and site restoration. Appropriate RAFI fund expenditures would include major capital expenditures in the Government-owned structures/facilities that are assigned to Concession Contractor for the purposes of its use. The following list identifies some but not necessarily all of applicable expenditures:

- Foundations.
- Building frames.
- Window frame replacement.
- Sheathing.
- Sub-floors.

- Drainage.
- Renovation of building systems (electric, plumbing, HVAC, roofing, etc.).
- Additions (buildings, walkways, docks, etc.).

Certain attached fixtures used by the applicable facilities would be considered appropriate for RAFI fund expenditures, for example:

- Water heaters.
- Compressed air tanks.
- Fuel storage tanks.
- Hoists and equipment.
- Vault and composting toilet facilities.
- Others on a case by case basis.

The Concession Contractor may, with the approval of the Contracting Officer, be allowed to charge the RAFI fund for reasonable administrative expenses directly associated with the implementation of capital improvements. Such expenses, however, will not exceed 5 percent of approved project expenditures. Before allowing such expenses, they must be approved, in writing, by the Reclamation Contracting Officer, who shall determine the reasonableness and appropriateness of such expenses. Such approval shall be based on the Concession Contractor's submission of a detailed listing of the administrative costs it expects to incur and those it seeks to fund through the RAFI.

H. PROJECT CONTRACTS

The contracts entered into by the Concession Contractor (or others, should that be authorized) to undertake projects are private contracts, not Government contracts. The Concession Contractor shall not, directly or indirectly, enter into any arrangement or agreement whereby it receives money or other benefits from the contractor.

The Contracting Officer may require that the RAFI funds be used to pay for the cost of an independent, third-party construction supervisor/inspector to represent the interests of the Government on any project in which the Contracting Officer feels such a supervisor/inspector would be cost effective and necessary to the sound administration of the project.

The Concession Contractor shall ensure that a Builders' Risk Form insurance policy is in effect during the construction. The Contracting Officer will approve, in writing, the type and amount of insurance. This policy is an appropriate expenditure from the RAFI funds.

I. PROJECT NOMINATION AND APPROVAL

1. Spending money from the RAFI requires a coordinated effort between the Concession Contractor and the Reclamation Contracting Officer. Projects must be proposed, prioritized, approved, bid, and accomplished using the orderly process described below to ensure accountability.

2. Reclamation staff, the Concession Contractor, or both may submit proposals to the Contracting Officer for the use of the RAFI funds using a format established by the Contracting Officer.

3. The Contracting Officer will establish an account committee to review and recommend approval or disapproval of project nominations in accordance with the Annual Improvement Management Plan and Exhibit H. The committee will include at least Reclamation's concession management person and other staff members deemed appropriate by the Contracting Officer. The chair will be the Reclamation lead concession operative unless a different appointment is made by Reclamation. The Contracting Officer will establish a process to review, prioritize, and approve or disapprove project nominations based on, but not limited to, the following:

   - Applicable laws and regulations.
   - Reclamation's Concessions Policy and Directives and Standards.
   - Concession contract and amendments, including the appropriateness of the project given the RAFI fund restrictions stated in this exhibit.
   - Operating Plans, Maintenance Plans, and Annual Improvement Management Plans.
   - Need, based on resource impacts or human risk factors.
   - Compliance with Reclamation planning documents.
   - Other applicable factors.

   Upon completion of the review, the committee will prepare a record of the evaluation and a recommendation for approval or disapproval by the Contracting Officer. The documentation will be included in the proposal format established by the Contracting Officer.

4. The Contracting Officer will review project nominations for approval.

5. The Contracting Officer will authorize each approved project in a written letter to the Concession Contractor. The letter will establish a project account number and set a not-to-exceed budget amount. The established budget may be increased only by subsequent written authorization by the Contracting Officer. The budget amount will include all direct project hard and soft costs, such as design, construction, material purchases, environmental compliance reports, environmental mitigation, contingencies, and construction inspection. The project statement will provide a chronological audit trail of the decision-making activity, including meetings, inspections, and change orders, from nomination to project completion. Support documents will be maintained in the project file or referenced in the project statement.

J. SPECIFICATIONS, DESIGN, AND BIDDING

1. Work funded by a RAFI account is to be accomplished through competitive contracts or as described below. The Concession Contractor shall assume responsibility, including liability for any RAFI funded contracts awarded but not completed by the previous Concession Contractor pursuant to this Concession Contract.

2. Concession Contractor employees will not perform construction work unless the Contracting Officer determines that there are circumstances that make such work advantageous and that it would be effectively managed. The Concession Contractor may use sole-source contracts only with the prior approval of the Contracting Officer.

3. The Concession Contractor may not bid as an independent contractor or be employed by the contractor for RAFI-funded projects within their own Concession Contract.

4. The Concession Contractor shall not directly or indirectly enter into any contract whereby it benefits directly or indirectly through the transfer of funds or other benefits from a RAFI project contractor conducting work within the bounds of the Concession Contractor's Concession Contract.

5. Exceptions to these policies may be granted, in writing, by the Contracting Officer on a case-by-case basis when there are unusual circumstances, clear advantages to the Government, and adequate controls.

6. The Contracting Officer will approve a project scope of work before the Concession Contractor begins project design.

7. Design work will typically be accomplished by an architect, engineer, or other design consultant hired by the Concession Contractor. The Contracting Officer will approve the Concession Contractor's selection of the design consultant.

8. Plans and specifications will be prepared by the Concession Contractor or the Concession Contractor's design consultant. When design is involved in a project, the designs will be reviewed by the Contracting Officer as appropriate to the project and as specified in Exhibit H. Sufficient time should be allowed for design review by appropriate Reclamation staff at area, regional, or technical service center offices or by independent consultants.

9. Once plans and specifications are approved, the Concession Contractor will prepare to advertise or otherwise solicit bids for the project.

10. For each project, the package for bidding will include at least the plans and specifications and a draft contract or agreement under which the work will be carried out and that has been reviewed and approved by the Contracting Officer. If lodging and/or meals are provided by the Concession Contractor as part of the contract, the contract must include this provision and rates.

11. If the project is bid, the Concession Contractor will receive, open, and evaluate project bids.

12. The Concession Contractor will recommend and justify selecting a contractor from among the bidders or from other sources if a bid process was not used. This recommendation will be accepted or rejected, in writing, by the Contracting Officer. Once confirmation has been issued, the Concession Contractor is authorized to sign a contract and proceed with the project.

13. Change orders on project contracts require approval, in writing, from the Contracting Officer.

14. Upon certification from the contractor that a project is complete, the project will be inspected jointly by the Concession Contractor and the Contracting Officer. The project will not be accepted by the Concession Contractor until authorized in writing by the Contracting Officer.

K. Initial Establishment of RAFI Account

The Concession Contractor shall establish and deposit into a RAFI, within 15 days after signing the contract, a sum equal to $2,000 (Two Thousand Dollars), for each of the six concession areas. This amount will serve as an initial working balance and will offset amounts due in the initial quarterly payments until an amount equal to this initial amount has been covered.

EXHIBIT L

LND 04-01 DIRECTIVES AND STANDARDS

LND 04-01 Directives and Standards

Subject: Concessions Management by Reclamation[1]

Purpose: Sets forth the directives and standards for planning, development, and management of concessions at Reclamation projects.

Authority: Reclamation Act of 1902, as amended and supplemented; the Reclamation Project Act of 1939; and the Federal Water Project Recreation Act of 1965, as amended.

Contact: Land, Recreation, and Cultural Resources Office, D-5300

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1. **Definitions**.

   A. **Concession**. A concession is a non-Federal commercial business that supports appropriate public recreation uses and provides facilities, goods, or services for which revenues are collected. A concession involves the use of the Federal estate and usually involves the development of real property improvements.

   B. **Cooperating Association**. A cooperating association is a nonprofit organization. It is a Federal 501(c) tax-exempt entity incorporated within the State in which it operates, and it is governed by a volunteer board of directors. Cooperating associations assist in enhancing interpretive programs, providing visitor information, funding research, and supporting various resource themes.

   C. **Exclusive Use**. Exclusive use is any use that excludes other appropriate public recreation use or users for extended periods of time. Exclusive use includes, but is not limited to, boat docks, cabins, trailers, manufactured or mobile homes, structures, roads, or other amenities that are determined by Reclamation to be exclusive use.

   D. **Federal Estate**. The Federal land and water areas under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation.

   E. **Fixed Assets**. Fixed assets are any structures, fixtures, or capital improvements permanently attached to the Federal estate.

   F. **Improvement**. An addition to real property that increases its value or utility or that enhances its appearance.

   G. **Incidental Revenues**. Incidental revenues are generally defined as those revenues generated from the use of Reclamation's project lands and facilities that are incidental to authorized project purposes.

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[1] The following directives and standards apply to concessions managed directly by Reclamation. Separate directives and standards address concessions managed by non-Federal partners.

Although recreation and concession facilities are authorized project purposes, it has been determined that revenues generated from the use of the Federal estate by concessionaires are to be credited as incidental revenues.

H. Total Benefits to the Government. Total benefits include:

(1) **Direct Returns**. These are revenues generated by authorized concession contracts and paid directly to the United States Treasury and credited in accordance with Reclamation Manual (RM), Crediting of Incidental Revenues, PEC 03-01.

(2) **Direct Benefits**. These are fees paid into a contractually designated special account for resource and capital improvements that directly benefit the public in the area of operations where the fees are collected.

(3) **Indirect Benefits**. These are services performed by the concessionaire that benefit the public or improvements made to the Federal estate by the concessionaire.

2. **Existing Concession Contracts.**

A. **Compliance**. Existing concession contracts must be brought into compliance with the Concessions Management Policy and Directives and Standards at the first legal opportunity, for example, if the contract is amended. If a concession contract expires or is terminated because of contract default or for other reasons, any subsequent concession contract must comply with the Concessions Policy and Directives and Standards.

B. **Unusual Circumstances**. In the event that unusual circumstances prevent Reclamation from issuing a new contract in a timely manner, a one-time, temporary contract may be issued. The temporary contract must comply with the Concessions Management Policy and Directives and Standards and may be issued for a period not to exceed 2 years.

3. **Concessions Planning.**

A. **General**. Before issuing a concession prospectus and Request for Proposal (RFP), Reclamation will complete a formal commercial services plan and financial feasibility evaluation.

(1) **Commercial Services Plan**. The commercial services plan can be an addendum to a resource management plan or similar planning document. If there is no other planning document, the commercial services plan may stand on its own. At a minimum, the commercial services plan must determine the number of concessions necessary to meet the public needs, the type of facilities and services to be provided, the financial feasibility of the concession(s), and the location(s) appropriate for commercial activities. The complexity of commercial services plans will vary according to location, past visitor use, anticipated revenues, and other factors.

(2) **Financial Feasibility Evaluation.** The financial feasibility evaluation, included in the commercial services plan, will include, at a minimum, a documented determination of the financial viability of the proposed concession operation, including, the estimated fees to be returned to the Government, a justification for the proposed length of the term of the concession contract and the underlying assumptions regarding concessionaire capital investment in the concession.

(3) **Planning for New Concessions Contracts**. It is essential that area and regional offices allow adequate time to complete the commercial services planning process, develop an RFP and contract, and receive the Commissioner's Office review and approval of the RFP and contract. In some cases, the planning for new concession contracts(s) must begin several years in advance of the date anticipated the contract(s) will be awarded.

B. **Commercial Services Plan**. Decisions to contract for concessions must be based on the results of the commercial services planning process, which will include public involvement, financial feasibility evaluation, and environmental analysis. During the planning process, the following criteria will be applied to determine appropriate facilities and services:

(1) Facilities and services must be necessary and appropriate for a broad spectrum of public use and enjoyment.

(2) Commercial facilities must not be developed or expanded on the Federal estate if existing facilities, on or off the Federal estate, adequately meet current and projected needs.

(3) Facilities and services must reflect the general public's needs rather than the desires of a particular individual or group. Existing concessionaires may provide input through the public involvement process.

(4) The financial feasibility evaluation must consider the concession's:

(a) Gross revenues (receipts) by operating department (lodging, food, and beverage).

(b) Operating expenses:

(i) Direct expenses by operating department (including labor and cost-of goods sold).

(ii) Unallocated expenses (including utilities and repair and maintenance).

(iii) General and administrative expenses (including overhead, officer salaries, office supplies, and travel).

(iv) Fixed expenses (including rent, interest, depreciation, and reserve accounts).

(v) Franchise fees.

(c) Earnings before interest, depreciation, taxes, and amortization. (EBIDTA is a standard accounting value representing net operating income)

(d) Capital investment costs:

(i) Working capital.

(ii) Furniture, fixtures, and equipment.

(iii) Ongoing capital replacement.

(iv) New facility development costs.

(e) Cash flow analysis.

(f) Other appropriate factors that influence the concession's business opportunity (including length of season, rates, visitation, inflation, cost of capital, and appropriate target rate-of-return to concessionaire).

(5) Facilities and services must be compatible with Reclamation project purposes.

(6) Facilities, services, or sites considered to be exclusive use will not be allowed and should not be considered as a part of any commercial services planning alternative. Existing exclusive use facilities, services, and sites must be removed when a contract expires or, if possible, sooner.

(7) Potential impacts to natural and cultural resources must be considered in the development of facilities and services.

(8) Facilities must be harmonious in form, line, color, and texture with the surrounding landscape.

(9) The planning process will consider whether existing concession facilities should be relocated because: (a) they would serve the public better at a different location, (b) they are situated in an area that is topographically limited (steep slopes, soils subject to erosion, limited space for expansion, or the site cannot accommodate the demand) and cannot provide the best public services and facilities, or (c) the financial feasibility evaluation determines that combining one or more existing concessions would create a more financially stable concession.

(10) If existing fixed assets are proposed to be retained as a part of any new concession operation, they must first be formally evaluated to determine if their existing condition and useful life is sufficient to last through the duration of any new contract. If the evaluation determines that any fixed asset would have to have significant maintenance or would need to be replaced during the term of the new contract, then the fixed asset must be removed prior to issuing a new contract.

(11) Concession contracts and operations must comply with all applicable laws, rules, regulations, Executive Orders, and policies.

4. **Concessions Contracting.**

A. **General Application**. These directives and standards will apply to existing concessions contracts only if agreed to by both Reclamation and the concessionaire. Existing contracts may not be renewed, nor can the length of the term be extended. Existing contracts that are amended or modified within the current term must adhere to these Concessions Management Directives and Standards. New or replacement contracts will be awarded on a fully competitive basis.

B. **Request for Proposals (RFP)**. An RFP will be issued to actively solicit offers from interested parties. To allow for a wide distribution, the RFP will be published in the appropriate media and the following approach will be applied:

(1) **Fair Competition**. To ensure fair competition before and during the RFP process, meetings to discuss the RFP with existing or potential concessionaires or other outside parties must not be conducted. It is appropriate to have meetings with existing concessionaires to deal with ongoing operational or contractual issues and programs. The RFP should include a schedule of meetings

in which all interested parties can discuss requirements of the RFP. Other meetings requested by individual interested parties must be declined.

(2) **Equal Access to Information**. All information must be equally available to all interested parties during the RFP process.

(3) **Written Explanation**. Following release of an RFP, explanations or clarifications will be provided only in writing and must be sent to all parties who already have received the RFP and to any parties who are to receive it in the future.

(4) **Existing Concessionaires**. Existing concessionaires must respond to the RFP as a bidder to be considered for the new contract. If any existing concessionaire has a contract that includes a "Preferential Right of Renewal," the RFP must state that, if selected, the concessionaire's contract will be subject to all terms and conditions as outlined in the RFP. The RFP must also state how the preferential right of renewal will be applied in the bid process. No preferential right of renewal will be authorized for new, modified, or amended concession contracts.

C. **Review of Proposals**. A panel composed of Reclamation "subject matter experts" (e.g., financial, recreation, and concession experts) will be convened to review submitted proposals. If Reclamation desires, it may contract with external experts to analyze offers. The panel will forward a recommendation to the selecting official. The selecting official will provide selection criteria and a crediting plan to the panel.

D. **Contract Terms and Conditions**. The following items should be specifically addressed in concession contracts:

(1) **Standard Contract Language**. Reclamation's standard concession contract language will be used to ensure compliance with all applicable laws, rules, regulations, Executive Orders, and Concessions Management Policy and Directives and Standards. Standard contract language can be found in the Concessions Management Guidelines. (See paragraph 5E.)

(2) **Interim Operator**. Reclamation may select an interim operator if a contract is not in place at the time the existing contract expires or is terminated. Interim contracts will generally follow the existing contract provisions; however, contract terms and conditions must be modified to reflect current policies and directives and standards. Reclamation may select the existing concessionaire as the interim operator if the existing concessionaire is performing in a satisfactory manner. The interim operation will not exceed 2 years. A new contract must be awarded as expeditiously as possible.

(3) **Required and Authorized Visitor Services**. Contracts must outline the specific types of services, facilities, and activities that a concessionaire is REQUIRED to offer. The contract should also specify any other services or activities the concessionaire is AUTHORIZED to offer. It must be clear that those required services are not optional and must be provided. Any service, facility, or activity not identified in either category is not authorized without a contract amendment or written authorization from the contracting official (Regional Director or delegate).

(4) **Sale and Transfer**. Concessionaires or parties holding interests in a concession contract may not sell, assign, or transfer their interests or a part of their interests to another party without the prior written approval of the contracting official (Regional Director or delegate).

Concessionaires must complete and submit all sale and transfer information as required by Reclamation before approval of a sale or transfer of all or any portion of a concession operation will be considered.

(a) **Proposed Transfer**. A proposed transfer of interest is subject to the same evaluation process that is performed for a new concession contract. The Reclamation-designated official may choose not to approve a proposed sale or transfer or may choose to place conditions on the approval.

(b) **Change of Original Contract Terms.** Concession contracts will provide that the terms and conditions are subject to change by Reclamation before approval of a sale or transfer. The length of the term may be reduced but not extended.

(5) **Default and Nonperformance.** Clauses addressing default, penalty, and termination will be included in all concession contracts. The review and evaluation process will be critical to help determine if a concessionaire is in default or not meeting the terms of the contract. [See paragraph 4D(27).] The contract will also allow Reclamation to require a surety or performance bond at any time, collect penalties and administrative costs for default and nonperformance, and terminate the contract.

(6) **Length of Term**. The term of all contracts will be limited to the shortest period practical and will be based primarily on the investment required of the concessionaire, as determined through the financial feasibility evaluation. The term of a contract requiring minimal or no new capital investment should generally not exceed 5 years. When substantial investment is required, the term will be based on the financial feasibility evaluation to ensure that concessionaires receive a reasonable return on their investment. New contracts cannot contain renewal clauses.

(7) **Subconcessions**. Subconcessions are not permitted.

(8) **Concessions Building and Improvement Program**. All designs for construction must be approved by Reclamation and must comply with applicable environmental regulations and building code requirements, including those for accessibility and historic preservation. In areas where State or local construction standards are not available, Reclamation may provide appropriate standards. Where required and before construction, the concessionaire must obtain all required building permits from the local authorities. All the concessionaires' facilities will be harmonious in form, line, color, and texture with the surrounding landscape.

(9) **Environmental Compliance**. Concession contracts will address all activities with potential environmental impacts resulting from the release of hazardous materials to the environment including, but not limited to, the following: pesticides, herbicides, sewage effluents, petroleum products, and liquid waste (gray water). Concessionaires are required to follow all applicable Federal, State, and local laws, rules, and regulations related to hazardous substance use, storage, and disposal. Application for and acquisition of all required certifications and permits are the responsibility of the concessionaire.

(10) **Interpretation and Thematic Programs**. Contracts should require concessionaires, to the extent possible, to support Reclamation's educational efforts through such actions as developing interpretive and area thematic messages in printed material (menus, marketing, correspondence, etc.), using outdoor signs, and, as appropriate, developing formal programs.

(11) **Operation and Maintenance Plan**. Concessionaires will prepare an annual operation and maintenance plan, which must be approved by Reclamation. Concession contracts must clearly state what the plan will contain. Reclamation's Concessions Management Guidelines provide a list of operation and maintenance items that should be considered for inclusion in the plan. (See paragraph 5E.)

(12) **Preference for Renewal**. Concession contracts will not include a preference right of renewal.

(13) **Reimbursement for Fixed Assets Constructed by Concessionaires**. Concession contracts will specify whether fixed assets located on the Federal estate by a concessionaire will remain on the Federal estate or be removed at the end of the contract.

(a) **Assets That Remain With the United States**. Title to all capital investments will be held by the United States and not the concessionaire. Concessionaires do not automatically have a right to compensation from the United States in fixed asset improvements upon contract expiration or termination. However, at the option of Reclamation, and when appropriated funds are available, Reclamation may purchase a concessionaires remaining assets that have not been amortized and the amount paid to the concessionaire will not exceed cost less depreciation.

(b) **Approval of Improvements**. Any new investment in fixed asset improvements by the concessionaire must be approved, in writing, by Reclamation before commencement of construction. This written approval will specify (i) the amount of money to be spent to construct or rehabilitate the fixed asset, (ii) the allowed depreciable life of the improvement (according to the IRS schedule), and (iii) the construction details and schedule.

(c) **Assets That Remain to be Purchased by a New Concessionaire**. Upon expiration, termination, or sale or transfer of a concession contract some fixed assets may not have been fully amortized. If Reclamation determines the fixed assets are still needed for the concession operation, the unamortized value must be purchased by the new concessionaire and based on the original cost less depreciation.

(14) **Area of Operation**. Each contract will authorize and define only the physical area necessary to conduct the business activities allowed by the contract. The contract must include a legal description and a detailed map. Concession boundaries will be surveyed by Reclamation and must be easy to recognize by the visiting public.

(15) **Additional Facilities or Services**. A concessionaire may request contract amendments for limited additional facilities or services that meet public needs and were not identified in the RFP. A major expansion of facilities or services is not permitted. Additional facilities or services are not allowed without advance approval by Reclamation.

(16) **Total Benefits to the Government**. Reclamation will determine and recover fair compensation, including direct returns and direct and indirect benefits, for the use, rights, and privileges granted under a concession contract. The concession contract will specify the direct returns and direct and indirect benefits.

(a) **Thresholds.** Targeted thresholds of total benefits will be developed to determine the optimal combination of payments. These will be used in advertisements, RFPs, and renegotiations to seek appropriate benefits to the Government and the public.

(b) **Direct Returns (Disposition of Fees).** The appropriate disposition of recreation or concession fees depends on the land status and authority used to collect the fees. Fees collected under the authority of the Land and Water Conservation Fund Act are to be deposited in the Recreation, Entrance, and User Fee Account, which is a special account for Reclamation established in the United States Treasury. For specific information, refer to the RM, Crediting of Incidental Revenues, PEC 03-01. Except as provided otherwise in a project specific authorization, fees collected pursuant to Reclamation law will be disposed of as follows:

(i) Fees generated by concessions or recreation activities on withdrawn project lands are deposited in the Reclamation Fund.

(ii) Fees generated by concessions or recreation activities on lands acquired for project purposes are deposited in the Reclamation Fund, to the credit of the project.

(17) **Utility Services Provided by Reclamation.** The value for utility services provided by Reclamation will be based on the recovery of full operating and replacement costs for utility capital investments and comparable utility rates. If the financial feasibility evaluation determines that it would not be feasible for the concessionaire to pay rates which would compensate Reclamation for its total capital and operating costs, Reclamation must determine the utility service rates that would be feasible and applied. Utility services include, but are not limited to, electricity, power, water, waste disposal, gas, and communication systems.

(18) **Exclusive Use.** Exclusive use facilities are not authorized in new concession contracts. If existing concession contracts are amended, a new provision must be included that requires exclusive use to be phased out as soon as possible, before the contract expires. A mandatory timetable for this phase out must be included in the amended contract. The concessionaire and a person hired to guard the concessionaire's investment may reside on the Federal estate, with the written approval of the contracting officer.

(19) **Sale of Personal Property.** The sale of personal property by anyone other than the concessionaire is prohibited on the Federal estate. Concessionaires will be permitted to sell their personal property on the Federal estate only to Reclamation or a succeeding concessionaire.

(20) **Rates and Merchandise.** Rates charged by concessionaires for all facilities, services, and merchandise will be based on charges for comparable facilities, services, facilities, and merchandise provided by the private sector in similar situations. Approved rates will ensure a fair return to the concessionaire and a reasonable charge to the public. Reclamation will approve such rates or rate schedules when the concessionaire proposes to change rates. Any rates in excess of comparable rates must be thoroughly justified and supported in writing by the concessionaire and approved by Reclamation.

(21) **Concessions Safety Program.** Concessionaires are responsible for providing and ensuring a safe and healthful environment for both the visiting public and employees by developing, implementing, and administering health, safety, and educational programs to ensure that

concession areas are managed in compliance with Federal, State, and local laws, rules, and regulations.

(22) **Insurance Program**. Concessionaires must have an insurance policy that will indemnify the United States and meet applicable State requirements. All liability policies will provide that the insurance company will have no right of subrogation against the United States and will provide that the United States is named as an additional insured. Reclamation must be provided with a certificate of insurance by the insurance agent to confirm that the above requirements are met before development begins or operations commence. The concessionaire must also provide Reclamation with a copy of each insurance renewal certificate throughout the term of the concession contract. The Regional Director or delegate will establish a minimum insurance requirement based on the facilities and services offered by individual concessions.

(23) **System of Recordkeeping**. Concessionaires will complete Reclamation's Annual Financial Report (AFR) form and provide any other financial information that may be requested. The annual financial reports will conform to the standard AFR form, without exception or modification.

(24) **Food Sanitation**. Concessionaires' food services will comply with Federal, State, and local food handling and sanitation laws, rules, and regulations.

(25) **Advertising and Signs**. Use of the Reclamation seal, logo, or name must be approved by Reclamation before it is displayed in advertisements or on signs. Outdoor signs or other forms of advertising must not be displayed on the Federal estate without the approval of Reclamation.

(a) The Reclamation logo or name will be obvious at all entrances to all concessions.

(b) Concessionaires will be required to notify the public that they are authorized by Reclamation to conduct business on the Federal estate. All promotional material, regardless of media format (i.e., printed, electronic, broadcast), provided to the public by the concessionaire in connection with the services provided under the concession contract must be approved in writing by Reclamation. At a minimum, all such information will identify the concessionaire as an authorized concessionaire of the Bureau of Reclamation, Department of the Interior.

(26) **Statistical Data**. Concessionaires will furnish information as specified in Reclamation's Recreation Use Data Report on an annual basis or as otherwise requested.

(27) **Concessions Review and Evaluation**. Reclamation's Concessions Management Guidelines contain instructions on how to determine an appropriate rating and how to ensure that the concessionaire is in compliance with the terms of the contract. There are two types of review, the "local review" and the "external review."

(a) **Local Review**. The local review will be conducted by the Reclamation office directly responsible for oversight of the concession. The local review will be conducted at least twice annually. One of the inspections must be conducted during the high use season. The combined reviews will determine the annual performance rating. The review will include, at a minimum, items listed in the Concessions Management Guidelines. The possible ratings are Satisfactory, Marginal, or Unsatisfactory. A copy of the completed review and rating will be sent to the regional office and the concessionaire and entered into the

Recreation Use Data Report. The local Reclamation office will maintain all concession program management files and records.

(b) **External Review**. The external review will be conducted and documented by a team of technical specialists who are not employees of the office directly responsible for oversight of the concessions. At a minimum, contracts with a term of 5 years or less will be reviewed once, midterm; contracts with a term exceeding 5 years will be reviewed every 5 years. A copy of the review will be sent to the area and regional offices and the concessionaire. The external reviews will examine, at a minimum:

(i) The extent to which the concession operation meets Reclamation's Concessions Management Policy, Concessions Management Directives and Standards, and Concessions Management Guidelines.

(ii) The extent to which the concession activities are consistent with resource management plans and commercial services plans.

(iii) The extent to which the concessionaire is in compliance with the contract provisions, especially with respect to building improvements, operations, prices charged by concessionaires, fees returned to the Government, and annual financial reporting to Reclamation.

(iv) The quality and condition of the facilities and services related to the health and safety of the employees and the visiting public.

(v) The recordkeeping system(s) used by the local Reclamation office to determine that the concessionaire uses generally accepted accounting practices.

(vi) The recordkeeping system(s) used by the local Reclamation office to conduct quarterly and annual reviews.

(vii) The local Reclamation office records regarding the annual reviews and annual rating.

(c) **Corrective Actions**. If either the local or external review identifies operational or administrative deficiencies in the operation of a concession, a timetable must be established by the area office and approved by the Regional Director or delegate to correct these deficiencies. The contract must specify the actions that will be taken for marginal or unsatisfactory ratings. The possible actions will include suspension of all or part of the concession operation or termination of the concessions contract.

(d) **Disputes**. Disputes between Reclamation and the concessionaire are to be resolved through informal negotiations and discussions. In the event that such disputes fail to reach resolution, either party may request a formal, nonbinding arbitration process. Each party selects one member for the arbitration panel and, together, these two members will select the third (neutral) panel member. The panel will treat each party equally and fairly. Recommendations must be made by a majority of the panel members. If either party disagrees with the arbiter's recommendation, he or she may file an appeal with the Secretary of the Interior under 43 CFR, Part 4, Subpart G. The Secretary's determination is final and binding.

(c) **Officials Not to Benefit**. No member of the executive, legislative, or judicial branches of the Federal Government may be a party to any concession contract or receive any benefits from a concessions contract.

5. **Miscellaneous**.

A. **RFP and Contract Review**. All RFPs and concession contracts must be reviewed and approved by the Commissioner's Office. The following sequence of steps must be followed:

(1) Area or regional offices must submit the proposed RFP and contract along with supporting information to the Commissioner's Office. The supporting information must include appropriate planning documentation and financial feasibility evaluation.

(2) The Commissioner's Office will establish a review team appropriately suited to the complexity and scope of the RFP and the contract. The team will evaluate the RFP and the contract for sufficiency and compliance with the Concessions Management Policy and Concessions Management Directives and Standards.

(3) The Commissioner's Office will return the approved RFP and contract, or return the RFP and the contract for modification and resubmittal if necessary.

B. **Training**. All Reclamation offices are responsible for ensuring that Reclamation personnel involved with concessions have received training commensurate with their responsibilities.

C. **Nonprofit Organizations**.

(1) In certain circumstances, it may be appropriate for cooperative associations or nonprofit organizations to sell goods or provide visitor services to meet Reclamation's goals and objectives. All cooperative association arrangements must be approved by Reclamation if the cooperative associations operate within a concession.

(2) The cooperative association will be responsible for maintaining its accounting system, and the system cannot be combined with the annual financial report submitted by a concessionaire. Nonprofit organizations will also be given very clear allowances and restrictions identifying the type of business they are authorized to conduct and the type of goods or services they may provide. Just as with concessionaires, nonprofit organizations are prohibited from providing items or services not specifically authorized. All nonprofit organizations must provide written proof of their nonprofit status.

D. **Employment of Reclamation Personnel or Family Members**[2]. Reclamation employees or family members(s) may not be owners, partners, board members, corporate officers, general managers, or employees of any business providing commercial services on the Federal estate, nor may they have any financial interest in such a company. Ownership of stock shares traded in a recognized open market is not considered a financial interest under these directives and standards. Reclamation employees are further prohibited from using their public office for private or family gain. A Reclamation employee involved in activities concerning preparing specification formulation, contract award, or operational administering a concession may not participate in that activity if the employee

[2] Guidance on this issue should be obtained from an ethics counselor in the servicing Reclamation Personnel/Human Resources Office.

or a family member is involved in any phase or operation of that concession. Any Reclamation employee responsible for any phase of a concession contract will be excused from duties related to the contract if the employee or a family member is involved in the competition for the contract or the Reclamation employee or a family member may benefit financially from the award of the contract.

E. Concessions Management Guidelines. The Concessions Management Guidelines contain additional information that will assist Reclamation offices in complying with the Concessions Management Policy and the Concessions Management Directives and Standards.